



WORLD SHIPPING COUNCIL
PARTNERS IN TRADE

**COMMENTS OF
THE WORLD SHIPPING COUNCIL**

REGARDING

**THE 3RD REVISED DRAFT COMMISSION REGULATION 1250/2005
TO AMEND COMMISSION REGULATION 2454/93
TO IMPLEMENT THE COMMUNITY CUSTOMS CODE:**

**ADVANCE CARGO DATA ELEMENTS FOR
RISK ASSESSMENT PURPOSES**

March 1, 2006

The World Shipping Council and its Member shipping lines appreciate the opportunity to provide the following comments regarding these draft regulations concerning advance cargo risk assessment and associated data elements.

The Council supports the effort to establish within the Community, in and between its Member States, and between its Member States and the European Commission an enhanced cargo risk analysis capability and to apply that capability through advanced electronic filing of shipment information. The Council supports a “24 Hour Rule” strategy for containerized ocean commerce that requires shipment data filing 24 hours before vessel loading, risk assessment of that cargo before vessel loading, and addressing any high risk cargo concerns prior to vessel loading. We believe the interests of European commerce can be well served by such a regime.

In an effort to more fully understand how such a regime may apply to ocean carriers, and to offer suggestions for the Commission’s consideration for possible improvements to its draft implementing regulation, we have identified a number of issues. Our comments are based on the 3RD revised draft Commission Regulation (undated).

I. The Need for Electronic Data Transmission Capabilities

At the outset, the Council believes strongly that it is not realistic to introduce a Community-wide advance cargo risk assessment system until such time as all of the Customs administrations of administering port Member States have become automated and have electronic data filing and sharing capabilities. It will also be necessary for Member States to seek to have comparable and consistent risk screening and assessment capabilities.

The availability and utilization of electronic data communication will be required:

1. for efficient transmission of the relevant data from carrier operations in various ports around the world in a timely and efficient manner,
- 2) at all hours of the day to accommodate the industry's actual operations,
- 3) to allow data screening software, algorithms and other data analytical tools to be effectively employed in efficiently and quickly analyzing the data provided,
- 4) to maintain a database that can accurately reflect a shipment history, including amendments to the filed information, and
- 5) to enable timely replies to carriers not to load containers determined to be high risk, until the container can be further examined.

For effective risk assessment screening on cargo shipments before vessel loading, it is impractical, unworkable and unrealistic for paper documentation to be used for data transmission, analysis or communication between the Customs authority and the filing parties.

Most provisions in Regulation (EC) 648/2005 of the European Parliament and the Council (regarding cargo shipment risk assessment and management, information exchange between national Customs administrations and the Commission, advance cargo declarations, and Authorized Economic Operators (AEOs)) will become applicable "once the implementing provisions [in the Commission Regulation] ... have entered into force" (Article 2, 3rd sub-paragraph; *Official Journal*, 4.5.2005). Regulation (EC) 648/2005 goes on to state that "electronic declaration and automated systems for the implementation of risk management and for the electronic exchange of data between customs offices... shall be in place three years after [the relevant Articles] have become applicable" (emphasis added).¹

¹ However, any Member State may request an extension of the three-year period for putting in place the electronic declaration and automated systems. The Commission may, upon evaluation of any such requests and where appropriate, propose to the Council and the European Parliament an extension of the three-year period. The World Shipping Council is aware that on November 30, 2005, the European Commission announced its adoption of two proposals to modernize the Community Customs Code and to introduce an electronic, paper-free customs environment in the EU. The latter proposal is, according to the Commission's announcement, "designed to make Member States' electronic customs systems compatible with each other; introduce EU-wide electronic risk analysis and improve information exchange between

According to the provisions of Regulation (EC) 648/2005, it would appear that the contemplated Community-wide risk assessment system, based, inter alia, on the submission of advance cargo declarations, could thus take effect before electronic data collection and exchange systems have been put in place, either in all Member States, among the Member States, and between the Member States and the European Commission. However, it appears that the 3rd revised draft Commission regulation is intended to provide assurances against such a possibility.

We base this interpretation of the 3rd revised draft Commission regulation on the following two observations:

- a) According to Article 183, paragraphs 2 and 3, the filing of *paper* pre-arrival summary declarations, would only be allowed in narrowly defined circumstances. Contrary to earlier versions of the draft Commission regulation, the applicability of those paragraphs will no longer be dependent on a date to be set in the final regulation.²
- b) According to Article 2 in the 3rd revised draft Commission regulation, January 1, 2008, is tentatively been proposed as the date on which the filing of pre-arrival and pre-departure summary declarations and other risk-related provisions would take effect, including the above discussed paragraphs making paper filing the exception, supposedly meaning – based on a plain reading of the language - that electronic filing of such summary declarations would become the general requirement from that date at the earliest.

We respectfully request confirmation of whether this is a correct interpretation of the current state of the Commission's discussions with Member States in the Customs Code Committee. We would in particular appreciate clarification of whether it is the Commission's current intention that ocean carriers – upon entering into force of the Commission regulation – would not be required to submit pre-arrival and pre-departure summary declarations 24 hours before commencement of loading to the relevant Member States' Customs administrations, until electronic filing systems have been developed and implemented by all Member States and, further, that the current target date for those filing requirements taking effect has tentatively been set for January 1, 2008 (with the possibility that the date could be pushed back, but not pushed up).

If this indeed is the Commission's intention, the international liner shipping industry would be very supportive of, and welcome, such an approach.

However, we request the above stated clarification because the Foreword to the 3rd draft revised Commission regulation still includes the following qualification: "The revised implementing provisions must provide not only for the electronic and paperless environment introduced by the amendments to the Code.....but also for the transitional period during which paper declarations and documents will still be in use" (emphasis

frontier control authorities; make electronic declarations the rule; and introduce a centralized customs clearance arrangement". However, we also note that – according to the Commission's own press release – "it is envisaged that the implementing provisions and the electronic systems [contemplated in the two proposals] would be in place by 2009".

² Similar language, for pre-departure summary declarations, is included in Article 842b, paragraphs 2 and 3.

added). We also do so because we are unsure of the status and legal implications of the above-mentioned provisions of Regulation (EC) 648/2005, even if it is confirmed that the final implementing Commission regulation's pre-arrival and pre-departure filing requirements would be made contingent on the availability of electronic filing mechanisms in all Member States. Lastly, we do so because the Commission in its own press release, mentioned in footnote 1 above, has earlier indicated that such electronic filing mechanisms may not be available before 2009 at the earliest.

Consequently, and pending confirmation of our understanding of the Commission's current intention as reflected in the 3rd draft revised implementing regulation, we believe it useful to state, once again, our conviction that a prerequisite for a workable Community-wide containerized cargo risk assessment based on advance cargo information is that all Member States have electronic data processing systems in place that can effectively communicate with each other. Our position continues to be based on the following observations.

First, paper submissions of cargo manifests to various Member States' Customs authorities before vessel loading would be a tremendous burden on carriers (and likely also on the receiving Customs offices' personnel). Imagine the logistical problems in filing paper cargo manifests with the Customs authorities in numerous different Member States before commencement of vessel loading operations in each foreign port of loading. Liner shipping vessels typically load containerized cargo shipments at multiple foreign ports to be discharged at ports in multiple different Member States. For example, a single service loading cargo at six Asian ports for discharge in five European ports would require a total of 30 different advance manifest filings to five different Member States' Customs' offices. In addition, most liner shipping services are operated under "Vessel Sharing Agreements" of various sorts, pursuant to which ocean carriers will share vessels and vessel space with each other.³ Thus a single vessel service may have multiple, different ocean carriers using the vessel – each of whom must file its own separate cargo declarations with Customs authorities. Thus for the example above, where a single vessel service calls at 6 Asian ports, for cargo to be discharged at 5 European ports, and it has four ocean carriers each using the vessel service, 120 different filings would be needed to comply with a 24 Hour Rule. The workload, if performed before vessel loading via paper, would be overwhelming.⁴

Second, paper submissions of manifest information for the volumes of cargo covered by this system cannot be useful for Customs' risk assessment. Efficient data screening and risk assessment will require electronic data capabilities. Meaningful and consistent analysis of the volume of data covered by the requirements of this regulation cannot be performed in the required time frames without electronic data systems.

³ For example, the Grand Alliance and the New World Alliance are cooperative arrangements involving a number of different shipping lines, sharing space on each others vessels, that allow each carrier to offer the shipping public more frequent and efficient service at lower cost. Other less complex vessel sharing examples involve an ocean carrier (A) chartering a percentage of the vessel space on A's vessels to another ocean carrier (B) for B's use.

⁴ The problem would be even more unmanageable when amendments to the originally filed manifests are considered (the issue of amendments is discussed further in item 2(g) below), and when freight forwarder filings are considered (the issue of forwarder filings is discussed further in item 2(a)(2) below).

Third, a government's purpose in requiring cargo shipment data to be filed with its Customs authority prior to vessel loading is for that government to establish a screening system that can allow it to tell the carrier not to load the shipment aboard the vessel if it is high risk. If a Customs authority does identify a shipment as "high risk" and needing further review before vessel loading, an electronic response communication of a prompt "Do Not Load" message to the ocean carrier is essential. This is not systematically possible with a paper system.

Fourth, an electronic database is necessary to properly track shipment histories, including time of submission. Pre-loading manifest information may be amended after vessel loading (e.g., the European importer may sell the goods while in transit and change the consignee or the place of delivery). The capability to track and perform risk assessment with respect to such changes without a database would be severely limited, as would the process of filing timely amendments to the originally filed manifest information.

Fifth, vessels are loading cargo destined for Europe in foreign ports around the world, in every time zone, 24 hours a day, seven days a week. Under such operating conditions, paper filings to various Member States' Customs offices are wholly impractical. It is an essential corollary that if carriers must file cargo declarations 24 hours before vessel loading from ports around the world, that the receiving Member States' Customs authorities be capable of acting on and responding to such submission on a 24 x 7 basis as well. If carriers and shippers incur the substantial costs and operational obligations that this proposal would produce, and Customs is unable to reliably and promptly identify, screen and communicate in ample time before loading which cargo shipments require inspection or further review, this entire exercise would be unjustifiable.

For these reasons, we respectfully urge that the pre-arrival and pre-departure summary filing provisions of the Commission's implementing regulation only take effect at such time as all Member States with seaports have confirmed to the Commission that they have built and implemented electronic filing systems. The Council is conscious of the Commission's desire to arrange for a Community-wide cargo risk assessment capability, and supports the Commission's objective of establishing electronic filing and analysis systems throughout the Community and its Member States. However, without such electronic filing capabilities for the lodging of advance shipment data, we do not believe that a Community-wide risk system, based on pre-arrival and pre-departure summary declarations, would be credible, realistic or workable.

II. Pre-Arrival Summary Declarations

The Council and its Member lines support the objective of an advance cargo shipment data screening system for the European Community, and we recognize that such a system could be of value to both Member States' Customs authorities' and the Commission's efforts to address security and law enforcement objectives. For any such system to have meaning or to be effective, there must be an analysis and agreement regarding what data is needed for such screening purposes, and what commercial party is the appropriate one to provide that data.

These comments identify several issues regarding pre-arrival summary declarations where we would either suggest that further clarity be provided in the final implementing regulation and/or recommend that the regulation be changed in support of the stated objective of enhancing the Community's cargo risk capability.

(a) Carrier Filing Obligations

Article 36a of Regulation (EC) 648/2005 prescribes, as a general rule, that the pre-arrival summary declaration shall be lodged by "the person who brings the goods, or who assumes responsibility for the carriage of the goods into the customs territory of the Community". The 3rd revised draft Commission regulation in Article 183b, paragraph 1, refers to, but provides no further explanation of the scope of applicability of Article 36a. We believe that it is very important that the Commission's regulatory initiative on this issue be quite clear on the issue of what party is responsible for filing what information.

For ocean carriers, the summary declaration is presumably the cargo manifest, which utilizes the information found on carriers' bills of lading – the transportation contract governing the ocean carrier's transportation of that shipment. The ocean carrier's bill of lading contains information of relevance and interest for screening purposes, but it is limited to that information known to the carrier and the data in the bill of lading is strictly data relevant to the transport of the goods.

1. Clarity regarding the ocean carrier that would be obliged to file

The Commission's proposed "24 Hour Rule" filing requirement applies to "the person who brings the goods, or who assumes responsibility for the carriage of the goods into the customs territory of the Community". As noted earlier, vessel sharing arrangements (VSAs) are a common phenomenon in the international liner shipping business. In a VSA, the vessel operator (Carrier A) will share space on its vessel with other ocean carriers (e.g., Carriers B and C). Each ocean carrier will issue bills of lading for the containers it has entered into a contract of carriage for with its shipper customers. The vessel-operating Carrier A will not have issued – or have access to – the bills of lading for those containers of Carriers B and C and their customers; only the carrier that entered into the contracts of carriage for those container shipments will have that information. Therefore, and assuming that bill of lading information will provide the data elements in the pre-arrival summary declaration, the vessel-operating carrier would only be able to provide the required advance cargo information for the containerized shipments for which it itself has issued bills of lading, not for those issued by carriers who may have containers on its vessel.

We therefore understand that the 24 Hour Rule advance shipment declaration filing obligation lies with the ocean carrier that enters into the contract of carriage and issues the bill of lading to the shipper for the containerized goods, and wish to request confirmation of this assumption.

2. Clarity regarding the responsibility of freight forwarders issuing bills of lading

Just as an ocean carrier operating a vessel may charter or share space on its vessels with another ocean carrier, as discussed above, and will need to rely on that other ocean carrier to make the requisite filings with Customs authorities for its

customers' shipments, ocean carriers also sell space aboard their vessels to freight forwarders, who in turn resell that space and issue their own bills of lading to their customers.

A simple example may be helpful in illustrating this. Person X wishes to ship a container of goods to Person Z in Austria from Location A in Asia. It hires a freight forwarder (Company Y) for this transportation service. Y arranges to pick up an empty container from an ocean carrier in Location B, arranges to move the empty container to Location A (which could be in a different country) where the container is stuffed, and has the loaded container transported back to the port at Location B for shipment by the ocean carrier to a European port of discharge (it might be Italy, Belgium, Germany, etc). The forwarder then arranges for the inland haulage of the container from the European port of discharge to Austria.

The ocean carrier in this case may issue a bill of lading to Company Y, the freight forwarder, showing the origin of the shipment as B, the shipper of the goods as Y, the destination as the European port of discharge, and the consignee as Y or its agent; the goods description may be very general. The ocean carrier may have no knowledge of who the underlying shipper or consignees of the goods are, and may have a limited knowledge of the goods description or the shipment origin – information that is obviously relevant to any shipment risk assessment. The freight forwarder in this example would issue its own bill of lading to X that will provide a more complete picture of the transportation, showing X as the shipper, Z as the consignee, A as the origin, and Austria as the destination. The forwarder's bill of lading may also provide more specific and accurate information regarding the goods' description.

If only the ocean carrier's bill of lading information were used in the cargo risk assessment screening process, the receiving Customs authority would be conducting its risk assessment without access to the identity of the underlying shipper, the consignee, or the origin or destination of the shipment. Furthermore, the cargo declaration on the ocean carrier's bill of lading is likely to be more limited than the cargo description on the freight forwarder's bill of lading to its customer, X. In short, using only the ocean carrier's bill of lading information is not by itself a foundation for an effective cargo shipment risk assessment system.

The question is thus, when the Commission requires an advance pre-arrival summary declaration to be lodged by "the person who brings the goods, or who assumes responsibility for the carriage of the goods into the customs territory of the Community", whether a freight forwarder issuing a bill of lading⁵ for the carriage of goods into the Community Customs Territory is covered and must also file its bill of lading information. We believe the answer as a matter of law, practice, and policy is and must be that, when a freight forwarder issues a bill of lading to a customer, it acts as a carrier and legally "assumes responsibility for the carriage of the goods into the customs territory of the Community" and that it is no less "the person who brings the goods ... into the Community" than an ocean carrier that has purchased or chartered space on another ocean carrier's vessel.

⁵ A bill of lading is a contract of carriage between a carrier and a shipper. When a freight forwarder issues a bill of lading, it holds itself out and acts as a carrier and takes on the contractual obligations of a carrier to its customer.

Many container shipments are transported to Europe pursuant to bills of lading issued by freight forwarders. The percentage of cargo on ocean carriers' vessels controlled by forwarders may vary according to the individual ocean carrier's approach to the market, the market being served, price, and other factors, but, based on information provided by its Member lines, the Council estimates that between 20 to 70 per cent of a vessel's container shipments from Asia to Europe, for example, may be controlled by freight forwarders issuing their own bills of lading to their customers.

Because the reason for the advance information filing is to enable the receiving Member State's Customs authority to perform a meaningful risk assessment of the shipment prior to vessel loading, and because the information from a forwarder's bill of lading is needed in order to perform such risk assessment, freight forwarders must be obliged to file their bill of lading information to Customs authorities at the same time and in the same manner as ocean carriers.

If freight forwarders were not required to file their bill of lading data at the same time and in the same manner as ocean carriers, the regulations would produce highly discriminatory treatment which would operate to the commercial detriment of ocean carriers -- a cargo owner could ship its goods to Europe using a freight forwarder with a simpler and later set of documentation requirements than if it shipped the same cargo to the same place by contracting with an ocean carrier. If forwarders were not required to file at the same time and in the same way as ocean carriers, the regulations would also produce an illogical risk assessment anomaly -- namely, that a shipper using a freight forwarder to transport goods to the European Community would provide less advance information for Customs authorities' risk assessment than a shipper using an ocean carrier for the same transportation service. Or, stated more starkly, a shipper could avoid advance screening of important shipment data simply by using a freight forwarder, rather than an ocean carrier, to transport its goods, and in so doing render the Community's cargo security system less effective and meaningful than it otherwise could be.

The U.S. Government, when it established its "24 Hour Rule" understood and agreed with these concerns and required freight forwarders⁶ to file their bills of lading with U.S. Customs and Border Protection 24 hours before vessel loading, just as ocean carriers are required to do. We discuss below the need to establish a linkage between bill of lading information submitted by ocean carriers and freight forwarders, respectively, and provide a brief description of how such a linkage has been established for U.S. import containerized shipments. We strongly recommend the European Commission make it very clear that its regulations will require the same of freight forwarders.

Finally, we note that, while any credible risk assessment system must obtain such information, ocean carriers do not support being made responsible or accountable for transmitting freight forwarders' bill of lading data to Customs authorities. We believe from experience that most freight forwarders would generally not want to share such data with the ocean carriers. But even more importantly, we know from other nation's experiences that freight forwarders are capable of filing such information directly with

⁶ Under U.S. law, a freight forwarder issuing a bill of lading to its customer is defined as a "non-vessel operating common carrier" or NVOCC. (Section 3(17) of the Shipping Act of 1984.)

Customs authority, either using their own systems or by contracting with information service providers to perform this service.

(b) Linkage of Filed Data

As discussed above, the draft regulations will result in European Customs authorities receiving, for each vessel loading at a foreign port, numerous different cargo summary declarations from different carriers and forwarders. For the regulatory objective to be achieved and a “do not load” instruction to be effectively communicated and implemented, the ocean carrier operating the vessel must receive the “do not load” message from the issuing Customs authority, even if it is not the carrier that is issuing the bill of lading. Ocean carriers that share space with each other on their ships already have coordinated operations between themselves and their stevedores which allow them to act on a “do not load” message in a timely manner. Ocean carriers do not, however, have such operational coordination with freight forwarders, and thus these regulations will require a linkage between forwarders’ filed summary declarations based on their “house” bills of lading and the ocean carrier’s “master” bill of lading. This can be done, and has been successfully implemented in the United States 24 hour rule system, but it does require care in planning, clarity and specificity in how the linkage is accomplished. Furthermore, it will require a uniform and consistent approach and implementation across the various European Customs authorities.⁷

An essential element of designing an effective system to screen cargo shipments before vessel loading is designing the linkage in the automated Customs data systems between the ocean carrier’s “master bill of lading” with the freight forwarder and the forwarder’s “house bill of lading” with its customer. This requires an electronic data filing system and system programming so that, if a Customs authority’s risk assessment system identifies a freight forwarder’s shipment as “high risk” and in need of further review before vessel loading, the ocean carrier be notified electronically by the Customs authority in time to ensure that the high risk shipment is not loaded aboard its vessel. In the United States, the Council and its Member companies have worked closely and cooperatively with freight forwarders and U.S. Customs officials to make such a system efficient and effective in that country, and we would be willing to do the same with European Community. Under the U.S. pre-vessel loading filing system, the forwarder’s filing of its “house” bills of lading information to U.S. Customs is required to include the ocean carriers’ master bill of lading number; however, the master bill of lading information, filed by the ocean carrier, does not include the house bill of lading numbers. Instead, U.S. Customs, upon receiving the house bills of lading from the freight forwarder, will send a ‘match’ message to both the house and the master bills of lading information filers, i.e. the freight forwarder and the ocean carrier. Thus, typically, the ocean carrier will have no visibility to the house bill of lading numbers until these are sent to the carrier by U.S. Customs along with the individual house bill ‘matches’. These “matches” are used to identify a specific, freight forwarder controlled containerized shipment in the event that U.S. Customs issues a “Do Not Load”-message or otherwise

⁷ The need for such a “linkage” system to be designed and implemented consistently and uniformly amongst the various European Customs authorities is another reason for the effective date of these regulations to await the various nations’ Customs authorities’ full electronic automation of by their data systems.

has concerns about the shipment that must be addressed before loading of that shipment on to the vessel.

This pre-vessel loading filing system was developed in close cooperation between U.S. Customs, ocean carriers, and freight forwarders. It has worked well since its implementation, and we are not aware of any concerns about its usage by freight forwarders.

Without a similar system or capability to “link” the freight forwarder’s house bills of lading with the ocean carrier’s master bill of lading, there is a high likelihood that a “do not load” message sent by a Customs authority to a freight forwarder would not be shared with – and acted upon by the ocean carrier, and if different, also by the vessel operator - in time to keep the high risk container from being loaded aboard the vessel destined for Europe. This would not only produce an unacceptable security result, but would be likely to present unacceptable operational difficulties for the vessel operator and the cargo of all the other shippers on that vessel.

Each Member State’s customs authority will need to implement such a system, and we believe it is essential that such national systems be designed and implemented in a consistent and uniform manner.

(c) Data Elements

The 3rd revised draft Commission regulation states in Article 183, paragraph 1, that the pre-arrival summary declaration “shall contain the particulars, where appropriate in coded form, laid down in Annex 30A and must be completed in accordance with the explanatory note in that Annex and any additional rules laid down in other Community legislation”. We interpret footnote 14 (which does not seem linked to a specific paragraph) to mean that discussions with the Member States continue regarding precisely which data elements should be included in Annex 30A.

We only recently had the opportunity to see a copy of the current draft Annex 30A on which the views and observations of the Council and its Member companies have not been invited earlier. We intent to offer the Commission with additional comments on this draft in the near future which we hope will be of use before any final decisions are made by the Customs Committee on the actual content of Annex 30A.

We do, however, request the Commission to consider the following general points as it develops the list of data elements that ocean carriers would be required to submit in their pre-arrival summary declarations:

1. Define what data is needed for effective cargo security screening and ensure uniform collection across the European Community. The data to be included in Annex 30A should reflect the considered judgment of those responsible for cargo security screening regarding what data is needed to perform the screening function as effectively as practicable. The data needs to be within the knowledge of the commercial sector being asked to provide the information, and the Commission should be mindful that, as discussed previously, ocean carriers are not the only commercial parties with relevant information. The only consignment-related information available to ocean carriers is the information included in the bill of lading, which evidences the contract of carriage

between the carrier and the shipper. Similarly, while we understand the interest in establishing a common set of data elements for all transportation modes, it is important that such general data elements be interpreted and applied in a way that reflects and aligns with the *modus operandi* of the individual transportation modes and as well as those of the various segments within each mode, e.g. containerized shipments within the maritime transportation mode.

2. Information should be obtained from the party with most direct knowledge of the information. Ocean carriers should not be asked to be the source of consignment-related information that they do not possess and is not readily available to them. If the Commission regulations, for risk assessment purposes, want additional advance cargo information, they should obtain it from the parties with direct knowledge of, and responsibility for, the contents of the cargo shipments.

These principles are endorsed by and reflected in the WCO Framework of Standards to Secure and Facilitate Global Trade and its supporting documents, in particular the Integrated Supply Chain Management Guidelines. They also underpin the delineation in the WCO Framework of data elements for cargo security risk assessment purposes to be included in, on the one hand, the advance export goods and import goods declarations and, on the other hand, the carrier-submitted advance cargo declaration.⁸

In this regard, we also note that the 3rd revised draft Commission regulation refers to the possibility that other pre-arrival data elements than those to be identified in Annex 30A may be required according to “any additional rules laid down in other Community legislation”. While we respect the Community’s competence to require additional data elements, it is important that carriers, shippers and transportation intermediaries have certainty and predictability about *all* the pre-arrival reporting requirements imposed on them, that such clarity be provided in the implementing regulation, and that ocean carriers not be looked to as the only source of such information.

Turning then to the current draft Annex 30A’s columns with pre-arrival and pre-departure data elements, it is obvious that instead of separating, as done in the WCO Framework, the required advance data elements into two sets – one to be provided by the exporter and importer and another set to be provided by the carrier – the draft Annex 30 A essentially lumps the WCO identified advance data elements together into one set of data elements to be provided by the carrier. This is a major concern to us as doing so obfuscates the principles that the advance data should be obtained from the party with most direct knowledge of the information and, further, that carriers should not be looked at this only source for advance data for risk assessment purposes. The additional comments the Council will submit to the Commission in the near future on the draft Annex will attempt to address these matters in greater detail.

⁸ Standard 1 of Annex 1 of the WCO Framework very clearly is premised on the advance submission for security risk assessment purposes of one set of data elements to be submitted by the exporter or importer and another set of data elements to be submitted by the carrier. See Sections 1.1. Scope and 1.3. Submission of data.

(d) Where to File1. Containerized shipments brought into the Community Customs Territory

Article 183 b, paragraph 1 (a) (i), requires – referencing Article 36a in Regulation (EC) 648/2005 - that for containerized cargo “brought into the customs territory of the Community” a pre-arrival summary declaration must be submitted at least 24 hours to “the customs office of entry” before loading at the foreign port of departure.

Acknowledging that the 3rd revised draft contains new guidance on the meaning of the term “the customs office of entry”, we continue to believe that further clarity should be provided in the Regulation, and urge that the next draft of the regulation be as detailed and as specific as possible in identifying the respective filing obligations and responsibilities of this new regime. Container vessels deployed in European trade lanes will typically make a number calls at ports domiciled in different Member States within the Community as part of their voyage. It is very important that the Regulation be very clear regarding what data needs to be filed, to which national Customs authority, and when.

The new guidance is provided in Article 183 d, paragraph 5.⁹ While it does not specifically address containerized shipment and the associated time frames for filing of summary declarations, we understand the intent of the draft Regulation to be that an ocean carrier must file:

- Summary cargo declarations for *all* cargo to be discharged at any Community port, including any cargo onboard that is destined for a non-Community port (i.e., all “freight remaining on board” (FROB) with the Customs authority in the first Community port that the vessel intends to call. This filing must be made 24 hours before vessel loading at each foreign port where the vessel will load cargo destined for the Community. This Customs authority at the first Community port of call will then perform the security and safety cargo risk assessment before vessel loading, and is responsible to perform such screening for *all* the cargo on the vessel that will be entering that first Community port of call, regardless of whether the cargo’s destination may be within another Customs authority’s jurisdiction and regardless of whether the cargo will be discharged from the vessel at that port or at a subsequent Community port call;
- Summary cargo declarations will *also* need to be filed with the national Customs authorities at each subsequent Community port called for that cargo that will be unloaded from that vessel in that port. We further understand that, while the security and safety screening of the cargo would have been

⁹ The paragraph reads in its entirety: “Where a vessel or aircraft is to call at more than one Community port or airport, provided that it does so without intervening call at any non-Community port or airport, a summary declaration in accordance with Article 36a of the Code shall be lodged at the first Community port or airport for all the goods carried. The customs authorities at this first port or airport of entry shall carry out the risk analysis described in paragraph of this Article. Where a risk is identified, the customs office of the first port or airport of entry shall, dependent upon the level of threat, either take prohibitive action itself, or pass on the results of the risk analysis to the subsequent ports or airports. At subsequent Community ports or airports, a summary declaration shall only be required for goods to be discharged at that port or airport. The time limit referred to in Article 183b (1)(a)(iii) may be waived”.

performed by the Customs authority in the first Community port of call, the Customs authorities in the subsequent Community ports of call would still need the summary cargo declarations for their non-security law enforcement responsibilities.

For example, it is our understanding that a vessel loading cargo in India that will call ports in Italy, Belgium and the U.K. : 1) would need to file cargo summary declarations for all of the cargo being loaded in India that will be unloaded in within the Community customs Territory (or would be FROB) with Italian Customs authorities 24 hours before vessel loading in India; 2) would be required to file cargo summary declarations for the Belgium discharge cargo with Belgian Customs authorities, and 3) would be required to file cargo summary declarations for the U.K. discharge cargo with U.K. Customs. Also, in this example, the Italian Customs would be responsible for the security and safety risk assessment for all the containerized shipments on board the vessel when it calls the Italian port.

Further, in this example, it would have been logical if the Italian Customs, based on its risk assessment, would be responsible for and required to issue “do not load” messages for any cargo shipments that present a security or safety risk justifying such actions.

Under the terms of the quoted paragraph, however, Italian Customs may instead “pass on the results of the risk analysis” to the Customs authorities in the subsequent Community ports of call. The paragraph is silent on what actions such other customs authorities would be empowered or expected to undertake, and within which time frame, and in regard to whom. Would they, for example, be expected to inform the Italian Customs of the results of their own risk assessments and, if warranted, request Italian Customs to issue “do not load” messages on their behalf? Would they instead be expected themselves to issue any such “do not load” messages? If so, how would that align with what we understand – based also on conversations we have had with the commission staff – is the intent of the draft regulation, namely that security and safety risk assessments, which except for the rarest occasions of e.g. extraordinary smuggling activities should be the only basis for the issuance of “do not load” messages, be the purview of the Custom authorities in the first Community port of call?

We are very concerned that, as currently worded, the draft regulation would create a troublesome and ambiguous “hybrid” between a single Customs authority risk assessment approach and an approach where the Customs authorities of each Member State, in whose port cargo will be unloaded, would be responsible for conducting risk assessments for “their cargo” and the issuance of any “do not load” messages, if and when warranted. This “hybrid” creates great uncertainty regarding which government is responsible for the cargo security risk assessments for cargo to be discharged at European ports subsequent to the first port of call, which government is responsible for issuing “do not load” messages, and the timing of inter-Customs and Customs-carrier communications and the ability to act on them within the 24 hours before vessel loading.

These concerns are compounded by the fact that the quoted paragraph includes such a vague and undefined criterion as “dependent upon the level of threat” for when the Customs authorities may or may not decide to take “prohibitive action” themselves. We are further concerned by the significant change to Article 4d, paragraph 2, regarding data exchange between Customs authorities. According to this amended paragraph in

the 3rd revised draft regulation, “the messages to be used for the exchange of data [between Customs authorities in different Member States] shall conform to the structure and particulars defined by the customs authorities in agreement with each other”.¹⁰ We find it difficult to comprehend how a systematic and consistent risk assessment approach can be ensured between the Customs authorities in the individual Member States, when the very message sets to be exchanged between them to provide the basis for their ensuing risk assessments will not follow a common format but instead be dependent

We respectfully recommend that the “hybrid” risk assessment approach currently laid down in Article 183 d, paragraph 5, not be pursued in the final implementing regulation. Instead, we recommend that the regulation clearly provide that either a single Customs authority risk assessment approach pursuant to which one national Customs authority (the first European port of call) is responsible for performing the security screening and risk assessment for all the cargo shipments and the notification of the carrier of any “Do Not Load” messages¹¹, or, in the alternative, each Customs authority is responsible for the risk assessment for the cargo to be discharged in its port.

It is also necessary for the regulation to clearly provide that the applicable Customs authority must perform the risk assessment and issue any “do not load” messages deemed warranted as quickly as practicable and in no case later than 24 hours after the submission of the pre-vessel loading summary declaration. The current approach is ambiguous and would result in confusion, uncertainty and potentially would impair commerce.

2. Containerized shipments transported between Community ports

Article 183 d in the 3rd revised draft regulation includes a new paragraph 6 that reads: “Where goods are loaded at a Community port for discharge at another Community port and are carried on a vessel moving between Community ports without intervening call at any non-Community port, a summary declaration shall only be required for those goods at the Community port at which they are to be discharged. The time limit referred to in Article 183 b (1)(a)(iii) may be waived”. We have several concerns with this provision.

First, we note that this paragraph only pertains to maritime cargo, not to cargo transported by other transportation modes. This could have negative competitive implications for the competitiveness of maritime transportation, and could have an effect inconsistent with stated Community transportation objectives of increasing waterborne transportation to alleviate congestion and environmental constraints and concerns.

Second, the waiver of the time limit appears discretionary, rather than establishing a consistent Community position.

¹⁰ The earlier draft language read “...conform to the structure and particulars in these implementing provisions”.

¹¹ This could still allow for Customs authorities in subsequent Community ports of call to perform their non-security law enforcement responsibilities.

Third, the purpose of this filing is unclear. The time waiver would appear to ensure that any security screening would not occur until after the cargo has been loaded aboard the ship and the vessel has sailed. Goods to be loaded in the first Community port may be transhipped maritime shipments. Such shipments would already have undergone a security and safety risk assessment in accordance with Articles 183 d and 183 b. The goods may instead have entered the Community Customs Territory from a non-Member State via other transportation modes, in which case they would also have undergone security and safety risk assessments in accordance with the same Articles.¹² The goods may have been manufactured in the Community and transported to the first Community port by Community-based transportation; it would be reasonable to assume that any security and safety concerns regarding Community-origin goods would and should have been addressed, using existing reporting and documentation requirements, before the goods are loaded onto the vessel and, if warranted, resulted in the goods not being allowed to leave the country of manufacture or not being allowed to be loaded in the Community port.

Finally, we note that this paragraph would result in ocean carriers having to file three different types of advance summary declarations – one declaration to the Customs authority in the first Community ports of call 24 hours before commencement of vessel loading in the foreign load port; summary declarations to the Customs authorities for cargo brought into the Community to be unloaded in subsequent Community ports of call; and summary declarations for goods loaded in the first Community port for discharge at another Community port.

(e) When to File

While we understand that for security and safety screening, summary declarations must be filed with the Customs authorities at the first Community port of call 24 hours before vessel loading in the foreign load port, we are not clear about when the summary declarations must be filed with the Customs authorities in subsequent Community ports of call.

It is important that there be clarity and uniformity across European ports regarding this issue. As stated earlier, it is not unusual for a vessel serving European trade to call at four or five different European nation's ports. It would be very complicated and difficult for a carrier to have to comply with different filing time requirements.¹³

The liner industry's clear preference would be to submit one *single* pre-arrival summary declaration for all goods brought into the customs territory of the Community,

¹² Additionally, Article 183, paragraph 4 states that "Where goods are brought into the customs territory of the community under a transit procedure, and the transit data is exchanged ...and it comprises all of the particulars required for a summary declaration, the transit data can be used as summary declaration".

¹³ Our request for clarity is, in addition to the reasons discussed in this part of our submission, driven by the fact that the last subparagraph in Article 183 d, paragraph 5 ("At subsequent Community ports or airports, a summary declaration shall only be required for goods to be discharged at that port or airport. The time limit referred to in Article 183b (1)(a)(iii) may be waived") could be read to imply that the subsequent summary declarations may be filed after loading of the vessel in the foreign load port, but sometime before vessel arrival in the subsequent Community ports of call.

and then have the receiving Customs authority share that summary declaration with Customs authorities in subsequent Community ports of call. However, if it is determined that the single filing option is not attainable in the foreseeable future, multiple filings of pre-arrival summary declarations with multiple Customs authorities could probably be done without substantial disruptions to commerce, provided that the following conditions have been met:

- (i) The filing of the pre-arrival summary declarations is done electronically. As discussed earlier, submission of paper advance cargo manifests to multiple Customs administrations is an unworkable proposition. It is not realistic to contemplate the introduction of a Community-wide risk advance filing system until such time as all Member States' Customs administrations have become automated and have electronic data filing and sharing capabilities.
- (ii) The pre-arrival summary declarations to be filed to multiple Customs administrations should be required to include the same data elements without exceptions.
- (iii) The filing of pre-arrival summary declarations to multiple Customs administrations should be required to be done according to the same time frame.
- (iv) Forwarders' and ocean carriers' bills of lading must be linked by the Customs' systems, as discussed above.¹⁴
- (v) The final regulation must provide sufficient time for the liner industry to arrange for the new system and to explain it to its shipper customers, who would need to change their business practices in order to provide the requested information earlier than is done today

Finally, we note the provisions in the 3rd revised draft Commission regulation whereby the timeframes in Article 183b, paragraph 1 (including the 24 hour rule for containerized shipments) "may be changed where international agreements between the Community and other countries require the exchange of declaration data within time limits different from [the article]; or in cases [where an international agreement between the Community and a third country provides for the recognition of security checks carried out in the country of export".¹⁵ While we fully respect the principle of adhering to possible future international agreements, we note the importance and the advantages of a uniform data submission time frame. Having different time frames could result in confusion -- confusion that would turn into chaos if all containers on an 8,000 TEU

¹⁴ The reason for these conditions is that a single vessel being shared by four different ocean carriers, each doing business with a variety of freight forwarders, would require many hundreds of cargo summary filings for each voyage. Consider the following example of a vessel serving the Asia-Europe trade: 4 ocean carriers on a ship x 6 Asian ports of call x 5 European ports of call x 10 freight forwarder customers per ocean carrier = 1200 carrier filings. Each carrier filing would include data from many different customers' bills of lading.

¹⁵ Articles 183c and 181c. A comparable provision for pre-departure summary declarations is included in Article 842e (which refers to Article 592c).

vessel were to be regulated by numerous and different time frames established by either the various load and/or discharge countries.

(f) Risk Assessment and Article 183d

The Council supports the principle of conducting cargo risk assessment before vessel loading, the establishment of a European “24 hour rule”, and the objective of issuing carriers “do not load” messages for shipments determined as a result of the risk analyses to present a significant security or safety risk to the Community.

In addition to the risk assessment-related observations already made above (section d), we offer the following comments on this Article.

First, we note that some readers could find ambiguity in the wording of Article 183d, paragraph 1. It states that “the customs offices of entry shall, upon receipt of the information contained in the summary declaration.... carry out appropriate risk analysis, primarily for security and safety purposes, *prior to arrival of the goods in the Community customs territory*”. Paragraph 4, however, goes on to provide that if the risk analysis determines that a shipment “poses a threat to the Community’s security and safety, the customs authorities shall notify the declarant that the goods *should not be loaded*”; that is, a “do not load” message must be communicated by the relevant customs authority to the carrier prior to vessel loading, in time to prevent the container from being loaded in the foreign port. Thus, while it is certainly true that not every shipment of high interest to a Customs authority should be given a “do not load” message (e.g., shipments suspected of evading tax, trade, or anti-counterfeiting laws), there should be no ambiguity that any shipment that is deemed high risk for *security or safety reasons* should be issued a “do not load” message in an effective and timely manner prior to vessel loading in the foreign port, and not “prior to arrival of the goods in the Community” as stated in paragraph 1.

Second, such a system will require compatible and consistent European Customs authorities’ risk assessments and efficient electronic communications between Customs authorities and filing carriers. As noted earlier, such a system cannot be paper-based, but must be an electronic data system that can communicate promptly and electronically with filers and, hopefully, with other Customs authorities’ data systems. Specifically regarding “do not load” messages, we wish to note, as previously discussed, that although the draft regulation calls for the summary declaration to be filed 24 hours before vessel loading and the security and safety risk assessment to be completed within that same time frame, there is currently no time line included in the regulation for the issuance of “do not load” messages, if and when warranted. We recommend that the final implementing regulation be amended to include a provision requiring Customs authorities , under normal operating conditions, to issue any “do not load message” as soon as possible and in no case later than 24 hours after the submission of the summary declaration. We also recommend that the final regulation makes clear that if no “do not load” messages have been received 24 hours after the submission of the summary declaration, the ocean carrier can load the shipments included in the declaration without risking that it be denied permission to unload those shipments at the destination Community port.

Third, the third sentence of paragraph 1 address situations “where the summary declaration has been lodged at an office other than the office of entry”, in which case

“the customs authorities at the office of entry shall take into consideration the results of any risk analysis carried out by the other office”. This will require that the Customs authorities of the various Member States with ports are capable of electronic information exchange with each other – again demonstrating the need to condition the effective date of these regulations on the Customs authorities of all Community ports of call having operational electronic data filing and exchange systems.¹⁶

Fourth, we understand that this third sentence of paragraph 1 is intended to address situations such as vessel diversions, where a vessel may call at a port that was not the scheduled first Community port of call. It is appropriate to address such situations. At the same time, however, the language “shall take into consideration” raises the question of whether Customs authorities after the first Community port of call will also be conducting security and safety reviews and determinations of cargo before vessel loading in the foreign port. Thus, this sentence gives rise to the same concerns we raised previously regarding the amendment to paragraph 5 of that same Article whereby the Customs authorities at the first Community port of call “dependent on the level of threat, [shall] either take prohibitive action itself, or pass on the results of the risk analysis to the subsequent ports or airports”.

To further illustrate our concerns, consider the simple example used above of a vessel loading cargo in India for discharge in Italy, then Belgium and then the U.K. Does this paragraph mean that, for example, the U.K. Customs authorities may “take into consideration” the Italian Customs authority’s security and safety screening of the cargo, but is free to perform its own security and safety screening and issue its own “do not load” messages? Or in this case, is U.K. Customs bound to accept the Italian authorities’ determinations?

These are very important questions. If each of the Customs authorities of the various Member States is competent to perform security and safety screenings and to issue “do not load messages”, then the timing for filing the summary declarations must uniformly be 24 hours before vessel loading, without any possibility of exceptions. We also wish to note again the potential risk for more operational difficulties if security and safety screenings performed before vessel loading are undertaken by multiple, different European Customs authorities, especially if they are not using the same risk assessment criteria or methodology. We request that clarification be provided on this point, and specifically that the final regulation clearly sets out either a single Customs authority risk assessment approach or “each Customs authority does risk assessment for ‘its’ cargo” approach, and does so with a clearly established time line for when the risk assessment and any “do not load” messages deemed warranted must be done, i.e. in no case later than 24 hours after the submission of the pre-vessel loading summary declaration.

¹⁶ As noted above in section II.d) of these comments (and the related footnote 12), we are troubled by the recent amendment to Article 4 d, paragraph, whereby the structure and particulars of messages between Member States’ Customs authorities shall be regulated by bilateral agreements. If implemented as currently drafted, this provision could result in delays in and confusion surrounding such information exchanges that eventually may negatively impact ocean carriers’ operations.

(g) Amendments to Filed Information

Article 36 b, paragraph 5, in Regulation (EC) 648/2005 provides that the filer of the original pre-arrival summary declaration may subsequently make amendments except in certain specified conditions. The 3rd revised draft Commission regulation does not currently include a comparable provision for such declarations.

While it may be the case that other parts of the Commission regulation, not subject to amendment during this particular process, contain provisions regarding amendments of various customs declarations, we do believe it important that the final Commission regulation be clear about how amendments will be handled specifically for pre-arrival (and pre-departure) summary declarations. In order to facilitate the efficient implementation of such a significant new regulatory requirement, it would be important to provide guidance and clarity in the implementing regulation. There will be numerous situations where the ocean carrier, after submission of the original summary declaration and for legitimate reasons, would need to be able to make amendments without necessitating a re-start of the 24 hour clock. *For example*, cargo shipments that were not physically in the marine terminal of the foreign port of loading, but were expected to show up at commencement of vessel loading and thus were included in the original filing, do not show up after all. *For example*, bad weather or other causes may lead to changed arrival times and/or first Community port of call. *For example*, the shipper may change the place of delivery (and the country of the port of discharge) while the cargo is en route.

(h) Non-European Freight Remaining on Board (FROB)

A vessel may upon its arrival at the first and subsequent Community ports have containerized cargo shipments on board, which will remain on board during those port calls and not be unloaded and brought in or transshipped through the Community customs territory, instead being destined for importation into a non-Member State upon completion of the Community port calls.¹⁷ It is our understanding that it is the Commission's intention that such FROB shipments must be included in the pre-arrival summary declarations for the first Community port of call.

We encourage the Commission to make clear in the next draft of the regulations:

- 1) whether such FROB shipments are covered by the advance data filing requirements;
- 2) whether the required data elements are the same as for cargo to be unloaded in Europe; and
- 3) whether the FROB filings should only be included in the summary declaration lodged with the customs office in the first port of call within the Community or whether it must be included in all summary declarations to the customs authorities in all Member States included in a vessel's itinerary. It is our present understanding that the FROB filings would only be required for the Customs authority in the first Community port of call.

¹⁷ For example, a shipment from Mexico may be on a vessel that calls at a Mediterranean port in Europe before being transported onward on that same vessel for delivery in Israel.

(i) Waiver

Article 36 c of the Community Customs Code provides that the Customs office may waive the filing of a pre-arrival summary declaration if a customs declaration has been filed instead within the prescribed time limit. As far as we have been able to determine, the only provision in the 3rd revised draft Commission regulation that seems to address the issue of the interrelationship between a pre-arrival summary declaration and the filing of a customs declaration is Article 186. It, however, would seem to apply to filings required of cargo interests, not carriers' filing.

The Council respectfully seeks confirmation that this provision is not intended to waive a carrier's or a forwarder's pre-arrival summary declarations on the grounds that an importer or its agent has filed a customs declaration.

(h) AEO Status

While Article 183 a, paragraph 1, has been stricken in the 3rd revised draft Commission regulation, footnote 14 (which is no longer linked to a specific paragraph) appears to contemplate that fewer data elements than the-yet-to-be-developed "standard data-set" in Annex 30A would need to be included in the pre-arrival summary declaration if the filer has been granted the status of Authorized Economic Operator (AEO) benefiting from security and safety facilitation. Pending further clarification of the Commission's intention in this regard, we offer the following observations.

First, if this is intended to apply to AEO carriers or forwarders, it would appear to exempt the provision of these data elements for *all* their containerized shipments regardless of whether or not these shipments are controlled by shippers granted AEO status.

Second, if the intention is that the provision does not apply to carriers' AEO status, but only to shipments controlled by AEO shippers, who would be exempt from the submission of these data elements, the liner industry would have serious objections. A carrier will not know with confidence which customer is an approved AEO in good standing. Furthermore, it would be very confusing and costly to have two business processes at ports of loading: one for AEO shippers and one for non-AEO shippers.

Third, while we do not object to AEO programs and the concept of a "layered" cargo security strategy, there is no basis for concluding that the AEO safety and security standards are sufficient to conclude that a 24 Hour Rule regime should not continue to apply to shipments controlled by such parties.

III. Pre-departure summary declarations

Several of the Council's comments and observations above regarding pre-arrival summary declarations also pertain, *mutatis mutandis*, to pre-departure summary declarations, e.g. which filing requirements would apply to ocean carriers; which ocean carrier would be required to file; filing by freight forwarders that issue their own bills of lading; which data elements would be required to be included in the summary

declaration; which containerized shipments would be covered by exempted data element provisions for AEOs; and availability to make amendments to originally filed declarations.

Importantly, the availability of electronic data submission systems and of electronic filing mechanisms remains a significant concern also in regard to the pre-departure summary declaration filings and, more generally, the applicability of a Community-wide cargo risk assessment as envisaged in the current revised draft Commission regulation.

We welcome, and appreciate, that a number of the Council's earlier concerns regarding the filing of the pre-departure summary declaration have been addressed in the 3rd revised draft Commission regulation.

We also see as positive the inclusion of new Article 842d, paragraphs 2 -4, whereby "the customs authorities" shall notify "the declarant" if, upon completion of risk analysis, it is determined that "the goods are not be released". We assume that this new paragraph is intended to provide for a "Do Not Load" facility akin to the one contemplated for containerized shipments brought into the Community customs territory. We would, however, request that Article 842d be amended to make clear that (a) it is the customs office at exit that must undertake the risk assessment in accordance with paragraph 2 of that Article (paragraph 3 incorrectly refers to paragraph 1); (b) it is the customs office of exit that must notify both the submitter of the pre-departure summary declaration and – if the submitter is different than the ocean carrier (e.g. freight forwarder) – the ocean carrier if a shipment can not be loaded (the term "released" should be avoided); and (c) that office must issue such "do not load" messages within a specific time frame, following the submission of the summary declaration, i.e. no later than 24 hours after the submission; if stevedoring operations are not to be disrupted they should be issued in substantially less than 24 hours.

Finally, Article 182 a of the Community Customs Code and Article 842 a in the revised draft Commission regulation make clear that pre-departure summary declarations shall cover goods for which a customs declaration is not required. As written, this could be interpreted to mean that the filer of the pre-departure summary declaration, i.e. the ocean carrier, would be responsible for determining whether a customs declaration should have been submitted (by the exporter or its agent) for each and every containerized shipment presented to it for carriage. Ocean carriers should not be assigned such an obligation, which rightfully resides with the person, initiating the exportation, i.e. the exporter.

Thus, we respectfully request that the revised draft Commission regulation be amended to clarify that a pre-departure summary declaration shall be lodged to cover those goods that the exporter or its agent has identified to the carrier are not subject to a customs declaration and, furthermore, that the carrier is not required to verify the veracity of such identification. Such a clarification could usefully be made in combination with a new provision that clearly sets out who is responsible for the filing of the pre-departure summary declaration.

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Our Member carriers have found from experience that the kinds of changes envisioned in this draft regulation can require significant administrative, operational, and education efforts to be implemented successfully. For example, most carriers' filings

with Member States' Customs authorities today are likely carried out by the shipping lines' European business offices. In order to comply with a European 24 Hour Rule regime, it is likely that the carriers' administrative office functions would have to be transferred from European offices to offices at the foreign load port. That can require information system changes, business process changes, personnel changes and training, and marketing/education efforts. In short, these regulations will have a significant impact on carriers and their customers and how they conduct their business, and will require adequate time after the regulations are finalized for the industry to make the operational changes necessary to comply. Consequently, we would respectfully encourage that the final regulation provides for a sufficiently long implementation period after the regulation takes effect and before enforcement is commenced. Again, based on our experience, such an "informed compliance" period has proven very helpful to the industry and its shipper customers to arrange for and implement new business practices and procedures and to correct unavoidable mistakes and systems issues etc.

We appreciate the opportunity to provide these comments and observations, and we look forward to working closely with the Commission and the other parties in the supply chain to ensure that these regulations can be implemented in a way that not only enhances European security, but does not adversely affect the efficiency or reliability of the transport services carrying the Community's international commerce.